

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DEANDRE ANTHONY JOHNSON,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-08-1392-D
)	
CITY OF OKLA CITY, et al.)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. United States District Judge Timothy D. DeGiusti has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the complaint be dismissed without prejudice to refiling.

Plaintiff initiated this action by filing a complaint on December 30, 2008, alleging constitutional violations due to denial of religious freedom. The complaint alleged that at the time of filing this action, Plaintiff was in custody at the Oklahoma County Detention Center. The undersigned granted Plaintiff pauper status on January 6, 2009, and ordered an initial partial payment of \$10.00 by January 26, 2009. Order [Doc. No. 5]; *see* 28 U.S.C. §1915(b)(1)(A)-(B). Plaintiff was advised “that unless by January 26, 2009 he has either (1) paid the initial partial filing fee, or (2) shown cause in writing for the failure to pay, this action will be subject to dismissal without prejudice to refiling....” Order [Doc. No. 5]. To date, however, Plaintiff has neither made the \$10.00 payment nor demonstrated good cause

for his failure to pay.

The record does not reflect any explanation for Plaintiff's failure to pay. When the action was filed, Plaintiff had \$47.24 in his institutional accounts. Motion for Leave to Proceed *in Forma Pauperis* at 3 (December 16, 2008). Thus, Plaintiff apparently had the resources to pay the initial installment of \$10.00 but chose not to do so. In these circumstances, Plaintiff's complaint should be dismissed without prejudice to the filing of a new suit. *See Cosby v. Meadors*, 351 F.3d 1324, 1326-33 (10th Cir. 2003) (upholding dismissal of a federal inmate's civil rights complaint based on noncompliance with orders that inmate make installment payments on the filing fee or to show cause for the failure to pay).

Plaintiff is advised of his right to object to this report and recommendation by March 3, 2009. *See* W.D. Okla. LCvR 72.1. If the Plaintiff does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. Plaintiff is further advised that if he does not timely object, he waives his right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 11th day of February, 2009.



BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE